



Ontario: Annual Statutes

1987

c 30 Employment Standards Amendment Act, 1987

Ontario

© Queen's Printer for Ontario, 1987

Follow this and additional works at: http://digitalcommons.osgoode.yorku.ca/ontario_statutes

Bibliographic Citation

Employment Standards Amendment Act, 1987, SO 1987, c 30

Repository Citation

Ontario (1987) "c 30 Employment Standards Amendment Act, 1987," *Ontario: Annual Statutes*: Vol. 1987, Article 32.

Available at: http://digitalcommons.osgoode.yorku.ca/ontario_statutes/vol1987/iss1/32

This Statutes is brought to you for free and open access by the Statutes at Osgoode Digital Commons. It has been accepted for inclusion in Ontario: Annual Statutes by an authorized administrator of Osgoode Digital Commons.

CHAPTER 30

An Act to amend the Employment Standards Act

Assented to June 29th, 1987

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clause 1 (d) of the *Employment Standards Act*, being chapter 137 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(d) “employer” includes,

- (i) any owner, proprietor, manager, superintendent, overseer, receiver or trustee of any activity, business, work, trade, occupation, profession, project or undertaking who has control or direction of, or is directly or indirectly responsible for the employment of a person therein, and
- (ii) any associated or related corporations, individuals, firms, syndicates or associations treated as one employer under section 12, where any one has control or direction of, or is directly or indirectly responsible for the employment of a person therein,

and includes a person who was an employer.

(2) Section 1 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 51, section 1, is further amended by adding thereto the following clauses:

- (fa) “establishment” means a location at which the employer carries on business, but where the employer carries on business at more than one location, separate locations constitute one establishment if,
 - (i) the separate locations are located within the same municipality, or

- (ii) one or more employees at a location have seniority rights that extend to the other location by virtue of a collective agreement or written contract of employment whereby the employee or employees may displace another employee of the same employer;

.

(ja) “payroll” means, in respect of an employer, the greater of,

- (i) the wages earned by employees in the twelve-month period ending the last day of the last fiscal year established by the employer that ended prior to the termination of an employee’s employment,
- (ii) the wages earned by employees in the twelve-month period ending on the last day of the second last fiscal year established by the employer that ended prior to the termination of an employee’s employment, or
- (iii) the wages earned by employees in the four weeks that ended with the last day of the last pay period completed prior to the termination of an employee’s employment, multiplied by 13;

.

(ka) “prescribed” means prescribed by the regulations;

.

(nb) “statutory notice period” means,

- (i) the period of notice required to be given by an employer under section 40, or
- (ii) where the employer provides a greater amount of notice than is required by section 40, that part of the notice period ending with the termination date specified in the notice which equals the notice period required under section 40;

.

(oa) “trade union” means an organization which is,

- (i) a “trade union” as defined in the *Labour Relations Act*, R.S.O. 1980,
c. 228
- (ii) an “affiliate” or “branch affiliate” as defined in the *School Boards and Teachers Collective Negotiations Act*, R.S.O. 1980,
c. 464
- (iii) a bargaining committee of the full time fire fighters under the *Fire Departments Act*, R.S.O. 1980,
c. 164
- (iv) an “employee organization” as defined in the *Colleges Collective Bargaining Act* which holds bargaining rights as bargaining agent, R.S.O. 1980,
c. 74
- (v) a “bargaining agent” as defined in the *Crown Employees Collective Bargaining Act*. R.S.O. 1980,
c. 108

2. Section 6 of the said Act is amended by adding thereto the following subsection:

(2) Where an employee initiates a civil proceeding against his or her employer under this Act, notice of the proceeding shall be served on the Director in the prescribed form on the same date the civil proceeding is set down for trial.

Notice of proceeding to be given to Director

3.—(1) Subsection 12 (1) of the said Act is repealed and the following substituted therefor:

(1) Where before or after this Act comes into force, associated or related activities, businesses, works, trades, occupations, professions, projects or undertakings are or were carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination thereof, and a person is or was an employee of any of such corporations, individuals, firms, syndicates or associations, or any combination thereof, such corporations, individuals, firms, syndicates or associations, or any combination thereof, shall be treated as one employer for the purposes of this Act, if the intent or effect of the arrangement is to defeat, either directly or indirectly, the true intent and purpose of this Act.

Related activities, etc., may be treated as one employer

(2) Subsection 12 (2) of the said Act is amended by striking out “individually” in the second line and inserting in lieu thereof “jointly and severally”.

4.—(1) Subsection 40 (1) of the said Act is repealed and the following substituted therefor:

Notice of
termination

(1) No employer shall terminate the employment of an employee who has been employed for three months or more unless the employer gives,

- (a) one weeks notice in writing to the employee if his or her period of employment is less than one year;
- (b) two weeks notice in writing to the employee if his or her period of employment is one year or more but less than three years;
- (c) three weeks notice in writing to the employee if his or her period of employment is three years or more but less than four years;
- (d) four weeks notice in writing to the employee if his or her period of employment is four years or more but less than five years;
- (e) five weeks notice in writing to the employee if his or her period of employment is five years or more but less than six years;
- (f) six weeks notice in writing to the employee if his or her period of employment is six years or more but less than seven years;
- (g) seven weeks notice in writing to the employee if his or her period of employment is seven years or more but less than eight years;
- (h) eight weeks notice in writing to the employee if his or her period of employment is eight years or more,

and such notice has expired.

*Dep To of
mpe.*
(2) Section 40 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 22, section 1, is further amended by adding thereto the following subsections:

Information
to be given

(2a) Where so prescribed, an employer who is required to give notice by subsection (2),

- (a) shall provide to the Minister, in the prescribed form, such information as may be prescribed; and
- (b) shall, on the first day of the statutory notice period, post in the employer's establishment, in the prescribed form, such information as may be prescribed.

(2b) The employer shall post the information required by clause (2a) (b) in one or more conspicuous places in the employer's establishment where it is most likely to come to the attention of the affected employees and the employer shall keep the information posted throughout the statutory notice period. Posting

(2c) The information required under subsection (2a) may include, Idem

- (a) the economic circumstances surrounding the intended terminations;
- (b) any consultations which have been or are proposed to take place with local communities or with the affected employees or their agent in connection with the terminations;
- (c) proposed adjustment measures and the number of employees expected to benefit from each; and
- (d) a statistical profile of the affected employees.

(2d) Notwithstanding subsection (2), the notice required under subsection (2) shall be deemed not to have been given until the date the completed form required under clause (2a) (a) is received by the Minister. When notice is effective

(2e) The Minister shall cause every form received in his or her office under clause (2a) (a) to be endorsed with a memorandum of the date of its receipt. Memorandum of date form received

(2f) Where the completed form required under clause (2a) (a) has been received, the Minister shall cause a notice to that effect to be sent to the employer within two business days of such receipt. Notice to employer

(2g) A copy of the memorandum referred to in subsection (2e) purporting to be certified by the Minister is, without proof of the signature of the Minister, evidence of the date the form was received. Statement by Minister as to time

(3) The said section 40 is further amended by adding thereto the following subsections:

(10) If an employee is temporarily laid off, as defined in the regulations, and the lay-off commences on or after the 15th day of June, 1987 and equals or exceeds thirty-five weeks in any period of fifty-two consecutive weeks, the employee shall be deemed no longer to be temporarily laid off and, if Entitlement to termination pay

the employee has not been given notice of termination in accordance with this section, the employee is entitled to termination pay.

Application
by trade
union

(11) Where an employee may be entitled to termination pay under subsection (10) is represented by a trade union, the trade union may apply to the Director in writing to extend the periods specified in subsection (10) and if the application is approved by the Director, subsection (10) shall be read as if such longer periods were specified.

Election by
employee

(12) An employee who is entitled to termination pay under subsection (10) and who has a right to be recalled for employment under the terms and conditions of employment may elect to be paid the termination pay forthwith or may elect to retain the right to be recalled.

Idem

(13) Where an employee elects under subsection (12) to be paid the termination pay forthwith, the employee shall be deemed to have abandoned the right to be recalled.

Where no
election
made

(14) Where an employee entitled to make an election under subsection (12) elects to maintain the right to be recalled or fails to make an election, the employer shall pay the termination pay to the Director in trust to be paid by the Director,

- (a) to the employer, where the employee accepts employment made available under the right of recall and in such case the employee shall be deemed to have abandoned the right to termination pay; or
- (b) to the employee in any case other than a case mentioned in clause (a) including the case where the employee renounces the right to be recalled and, upon payment, the employee shall be deemed to have abandoned the right to be recalled.

5.—(1) Subsection 40a (1) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 22, section 2, is repealed and the following substituted therefor:

Definitions

(1) In this section,

“lay-off” means a period of at least one week in which an employee receives less than one-quarter of the wages he or she would earn at his or her regular rate in a regular non-overtime work week unless the employee,

- (a) was not able to work or not available for work,

- (b) was subject to disciplinary suspension, or
- (c) was not provided with work by his or her employer by reason of any strike or lock-out occurring at his or her place of employment or elsewhere;

“termination” means,

- (a) a dismissal, including a constructive dismissal,
- (b) a lay-off that is effected because of a permanent discontinuance of all of the employer’s business at an establishment, or
- (c) a lay-off, including a lay-off effected because of a permanent discontinuance of part of the business of the employer at an establishment, commencing on or after the 15th day of June, 1987 that equals or exceeds thirty-five weeks in any period of fifty-two consecutive weeks,

and “terminated” has a corresponding meaning.

(1a) Where,

Severance
pay

- (a) fifty or more employees have their employment terminated by an employer in a period of six months or less and the terminations are caused by the permanent discontinuance of all or part of the business of the employer at an establishment; or
- (b) one or more employees have their employment terminated by an employer with a payroll of \$2.5 million or more,

the employer shall pay severance pay to each employee whose employment has been terminated and who has been employed by the employer for five or more years.

(1b) Where,

Where
location
deemed an
establishment

- (a) there is a permanent discontinuance of all or part of the business of an employer at a location which is part of an establishment consisting of two or more locations; and
- (b) fifty or more employees have their employment terminated in a period of six months or less because of the permanent discontinuance,

the location shall be deemed to be an establishment for the purpose of determining the rights of the employees employed at that location under this section.

Amount of
severance
pay

(1c) The severance pay to which an employee is entitled under this section shall be in an amount equal to the employee's regular wages for a regular non-overtime work week multiplied by the sum of,

- (a) the number of the employee's completed years of employment; and
- (b) the number of the employee's completed months of employment divided by 12,

but shall not exceed twenty-six weeks regular wages for a regular non-overtime work week.

(2) Subsection 40a (2) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 22, section 2, is amended by,

- (a) striking out "Subsection (1) applies" in the first line and inserting in lieu thereof "Subsections (1a), (1b) and (1c) apply"; and**
- (b) striking out clause (c) and substituting the following therefor:**
- (c) an employee who is absent because of illness or injury, if the employee's contract of employment has not become impossible of performance or been frustrated by that illness or injury.**

(3) Subsection 40a (3) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 22, section 2 and amended by the Statutes of Ontario, 1984, chapter 31, section 1, is further amended by,

- (a) striking out "Subsection (1) does" in the first line and inserting in lieu thereof "Subsections (1a), (1b) and (1c) do"; and**
- (b) adding thereto the following clause:**
- (c) an employee who has been guilty of wilful misconduct or disobedience or wilful neglect of duty that has not been condoned by the employer.**

(4) Subsection 40a (9) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 31, section 1, is repealed and the following substituted therefor:

(9) Where the employee elects to maintain the right to be recalled or fails to make an election, the employer shall pay the severance pay to the Director in trust to be paid by the Director,

Effect of election to maintain right to recall

- (a) to the employer, where the employee accepts employment made available under the right of recall and in such case the employee shall be deemed to have abandoned the right to severance pay; or
- (b) to the employee in any case other than a case mentioned in clause (a), including the case where the employee renounces the right to be recalled, and, upon payment, the employee shall be deemed to have abandoned the right to be recalled.

(5) Section 40a of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 22, section 2 and amended by 1984, chapter 31, section 1, is further amended by adding thereto the following subsections:

(10) Where an employee who receives notice of termination on or after the 15th day of June, 1987 resigns from employment during the statutory notice period and provides the employer with at least two weeks written notice of resignation, the employee shall,

Where employee resigns

- (a) where the employee has been given notice of termination because of the permanent discontinuance of all of the employer's business at an establishment, be deemed to have had his or her employment terminated by the employer on the date the notice of termination was to have taken effect; and
- (b) in any other case, be deemed to have been laid off by the employer commencing on the date the notice of termination was to have taken effect.

(11) The amount of severance pay for an employee who is entitled to severance pay under subsection (10) shall be calculated on the employee's length of employment up to the date on which his or her notice of resignation takes effect.

Calculation of severance pay

(12) Notwithstanding subsections (1a) and (9) and section 7, where the Minister so recommends, the Director may, on

Instalment payments

an application by the employer, approve the employer's plan to pay severance pay by instalment and, where such approval has been given, the employer shall be deemed to have complied with subsections (1a) and (9) and section 7.

Where employer fails to comply with plan

(13) Where an employer fails to comply with the approved plan and the Director does not approve another instalment plan within thirty days of such failure, all unpaid severance pay shall be deemed to have become due and payable on the date the Director approved the original instalment plan.

Maximum period for payment of instalments

(14) No instalment plan shall extend payment of severance pay for a period longer than three years from the date on which such severance pay became due and payable.

Where agreements made by trade union

(15) Notwithstanding section 3, where an employee who is entitled to severance pay under this section is represented by a trade union, the trade union may enter into an agreement with the employer which includes a settlement of all severance pay claims, in which case this section does not apply.

Director to be notified

(16) The parties to an agreement under subsection (15) shall forthwith notify the Director in writing.

Proceedings terminated

(17) Where there is an agreement under subsection (15), any proceeding under section 50 or 51 to determine severance pay is terminated with regard to the employees represented by the trade union.

6. Section 51a of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 31, section 2, is amended by adding thereto the following subsection:

Interest on trust moneys

(3) Where under this Act the Director is required to hold moneys in trust, the Director shall pay interest to the person entitled to receive such moneys at the prescribed rate of interest.

7. Subsection 65 (1) of the said Act is amended by adding thereto the following clauses:

(ta) prescribing rules for determining whether the termination of an employee who is not entitled to severance pay shall be taken into account in determining whether fifty or more employees have had their employment terminated in a period of six months or less, and whether the wages of an employee who is not entitled to severance pay shall be taken into account in determining the payroll of an employer;

- (tb) providing for the exclusion of weeks from the period of fifty-two consecutive weeks mentioned in the definition of “termination” in subsection 40a (1);
- (tc) prescribing forms and providing for their use;
- (td) defining any word or expression used in this Act that is not defined in this Act;
- (te) prescribing the manner in which information is to be given to the Minister under subsection 40 (2a);
- (tf) prescribing anything that by this Act is to be or may be prescribed.

8.—(1) This Act, except section 2, subsection 4 (2) and section 6, shall be deemed to have come into force on the 15th day of June, 1987. Commence-
ment

(2) Section 2, subsection 4 (2) and section 6 come into force on a day to be named by proclamation of the Lieutenant Governor. Idem

9. The short title of this Act is the *Employment Standards Amendment Act, 1987*. Short title

